

Before Mr. Justice Piggott and Mr. Justice Lindsay.

BHAWAN AND ANOTHER (DEFENDANTS) v. MADAN MOHAN DALI (PLAINTIFF)*
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 202—Remand—Effect of
 Revenue Court decision on the question of tenancy in a former suit, in a
 subsequent suit in Civil Court for ejectment as trespasser.*

1916
 May, 31.

Defendants were tenants of one D. D took proceedings in the Revenue courts to eject them as tenants-at-will. The Assistant Collector dismissed the suit, but the Commissioner allowed the appeal. The Board of Revenue, however, in second appeal dismissed the suit. D in the meantime had executed the decree passed by the Commissioner and obtained possession. Upon the decree passed by the Board of Revenue in their favour the defendants made an application to be restored to possession, but it was rejected as time-barred. D's son brought the present suit to eject the defendants as trespassers alleging that he had been in possession of the land as his *khud-kasht*; that the defendants had entered into forcible possession, and that the effect of the Revenue Court proceedings was to extinguish the tenancy. The defendants pleaded that the tenancy subsisted. The court of first instance decided that the tenancy was subsisting but granted to the plaintiff damages for forcible dispossession. The lower appellate court remanded the case to the first court with directions to act in accordance with the provisions of section 202 of the Agra Tenancy Act. *Held* that the order was the proper one to make in the circumstances of the case, and the question whether by reason of the events that had happened since the decision of the Board of Revenue the tenancy was extinguished or not was one which the Revenue courts were competent to decide. *Maru v. Gauri Sahai* (1) and *Sarju Misir v. Bindesri Pershad* (2) referred to.

THE appellants in this appeal were at one time tenants of Din Dayal. He sued to eject them, and the suit was dismissed by the Assistant Collector on the ground that they had acquired a right of occupancy. This decree was reversed by the Commissioner but restored by the Board of Revenue. In the meantime, however, the zamindar had taken out execution of the Commissioner's decree and formally ejected the appellants. After the decision of the Board of Revenue in their favour they applied for restoration of possession, but the application was dismissed as being time-barred. They, however, took actual possession of the land. Thereupon the heir of Din Dayal brought a suit against them in the Civil Court for ejectment as trespassers and for damages for forcible possession. His case was that the net result of the proceedings in the Revenue Court had been to extinguish the tenancy. The Munsif came to the

* First Appeal No. 35 of 1916, from an order of Harihar Lal Bhargava, Subordinate Judge of Shahjahanpur, dated the 23rd of December, 1915.

(1) Weekly Notes, 1904, p. 45. (2) (1913) 11 A. L. J., 691.

1916

BEHAWAN
v.
MADAN
MOHAN LAL.

conclusion that, in view of the decision of the Board of Revenue and of the fact that the defendants had regained possession of the land, a subsisting tenancy was established. He dismissed the claim for ejection but decreed damages for forcible recovery of possession. On appeal the Subordinate Judge held that having regard to the pleadings of the parties the Munsif should have adopted the procedure laid down by section 202, clause (1), of the Agra Tenancy Act, and remanded the suit for compliance with the provisions of that section. The defendants appealed to the High Court against this order of remand.

Munshi *Lakshmi Narain*, for the appellants:—

All the issues arising in the case having been decided by the court of first instance the order remanding the suit is unjustifiable. The suit was not decided upon a preliminary point. Upon the view of the law taken by the lower appellate court the proper procedure would have been for that court itself to have passed the order required by section 202 of the Tenancy Act; *Jagan Nath v. Bhawani* (1). Secondly, section 202 of the Tenancy Act is intended to operate only in cases in which the question whether the defendant is or is not a tenant of the plaintiff has not already been finally determined between the parties by a competent Revenue Court. Where the highest Revenue tribunal has already decided that question between the parties that decision operates as *res judicata*, and it would be quite unnecessary, and would lead to an abuse of the process of the court, for a Civil Court to take action under section 202 in such a case; *Sarju Misir v. Bindesri Pershad* (2). The decision of the Board of Revenue is binding on the parties as *res judicata* unless the plaintiff is able to show that circumstances have so changed as to extinguish the occupancy tenancy declared by that decision to exist. The Civil Court is entitled to examine the facts of the case in order to determine whether anything has supervened which renders the Revenue Court decision *res judicata* no longer. On the admitted facts of the case it is clear that according to the provisions of section 13,

(1) (1904) I. L. R., 27 All., 167.

(2) (1913) 11 A. L. J., 691.

clause (a), of the Tenancy Act, the appellants' occupancy rights still subsist.

Munshi *Gulzari Lal* (with him Munshi *Baleshwari Prasad*), for the respondent was not called upon.

PIGGOTT and LINDSAY, JJ. :— This is an appeal by the defendants against an order of remand. The appellants were at one time in possession of a certain plot of land as tenants of one Din Dayal. Din Dayal took proceedings in the Revenue Court to eject them, on the ground that they were tenants at will. The court of first instance, i.e., the court of the Assistant Collector, dismissed Din Dayal's suit for ejectment. It was decreed on appeal by the Commissioner, and again dismissed on second appeal by the Board of Revenue. In the meantime, however, the zamindar had taken out execution of the Commissioner's decree and had obtained formal possession. After the decision of the Board of Revenue in their favour, the tenants came to the Revenue court and asked to be restored to possession. It was held that this application, having been made after the prescribed period of limitation, was not maintainable and it was dismissed accordingly. The present plaintiff is the son of Din Dayal. He has brought this suit in the Civil Court on the allegation that the practical effect of the proceedings in the Revenue Court, and more particularly of the failure of the tenants to obtain within the prescribed period of limitation the benefit of the Board of Revenue's decision in their favour, had been to extinguish the tenancy. He alleges that he was himself in actual possession of the land in suit, cultivating the same as his *khud-kasht*, when the defendants re-entered into forcible possession thereof. He seeks for their ejectment as trespassers. The defendants' reply was to the effect that their tenancy was still subsisting and had not been extinguished by any of the facts relied upon by the plaintiff. The learned Munsif framed a number of issues and came to a decision in favour of the defendants on the question of their being still in possession under a subsisting tenancy. He also found in favour of the plaintiff on a subsidiary question, as to the latter's being entitled to damages on account of forcible possession taken by the defendants. Both parties appealed against this decree. The lower appellate

1916

BHAWAN
v.
MADAN
MOHAN LAL.

1916

BHAWAN
v.
MADAN
MOHAN LAL.

court has pointed out that the provisions of section 202 of the Agra Tenancy Act (Local Act, II of 1901) had been overlooked by the court of first instance. When the defendants met the plaintiff's suit by a plea of the existence of a still subsisting tenancy, the position described by section 202 aforesaid arose, and the provisions of that section ought to have been complied with. In this view the learned Subordinate Judge has set aside the decree of the court of first instance and has remanded the case to that court, with directions to begin the trial all over again at the point where that court went wrong; i.e., the court of first instance has been directed to pass an order in compliance with the provisions of section 202 of the Tenancy Act and to suspend all further proceedings until the legal consequences of that order have taken effect. In appeal against this order of remand a formal objection is taken that the order in question is not one which should have been passed, but that the lower appellate court ought, in any view of the case, to have passed an order itself under the provisions of section 202 aforesaid. It appears that there are conflicting decisions of this Court on the point; but we are content to refer to the case of *Manu v. Gauri Sahai* (1) which commends itself to our minds. We think it obviously more convenient that the case should be sent back to the court of first instance to be proceeded with by that court from the point at which that court had gone wrong. In the second place the decision of the lower appellate court is assailed on the merits. We have been referred to the reported case of *Sarju Misir v. Bindesri Pershad* (2). It is contended that the question of the existence of a tenancy, and of the rights of the present appellants as occupancy tenants of the land in suit, have been determined once for all by the decision of the Board of Revenue; that this decision should have been accepted, and that there was no room for any order under section 202 of the Tenancy Act. On the facts of the present case we do not think that the ruling above referred to is applicable. The decision of the Board of Revenue determines this point, viz., that, on the date on which the present plaintiff's father sought the ejectment of the defendants as tenants-at-will, the said defendants were in fact in possession of the land in suit as occupancy tenants.

(1) Weekly Notes, 1904, p. 46. (2) (1918) 11 A. L. J. 691.

That point is *res judicata* between the parties, having been determined by the ultimate court of competent jurisdiction. The plaintiff's case is that events have taken place since then which have put an end to the tenancy, and that the defendants have re-entered into possession of the land in suit as trespassers pure and simple. It has to be determined, on the one hand, what is the legal effect of the failure of the defendants to obtain within the prescribed period of limitation the benefit of the Board of Revenue's decision in their favour; and, on the other hand, the provisions of section 13 of the Tenancy Act, and their application to the facts of the present case, require to be considered. These, however, are points reserved by the Legislature for the decision of the Revenue Courts. The question must go to those courts for determination, whether the events which have occurred since the original suit for ejectment was instituted have or have not extinguished the tenancy which the Board of Revenue found to exist. We are satisfied that the order of the lower appellate court was right and the direction given by it correct. We therefore dismiss this appeal. Under the circumstances we order that costs of this appeal be costs in the cause.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Lindsay.

SANTI LAL (JUDGEMENT-DEBTOR) v. THE INDIAN EXCHANGE BANK,
(DECREE-HOLDER) *

1916
May, 31.

Act No. VI of 1882 (Indian Companies Act), section 169—Civil Procedure Code, 1908, order XXI, rules 58 and 63—Appeal.

The right of appeal under the provisions of section 169 of Act No. VI of 1882, is co-extensive with the right of appeal conferred by the Code of Civil Procedure.

In the liquidation proceeding of the Indian Exchange Bank a certain person described as the proprietor of the firm was directed by the Additional Judge of Lahore to pay a certain sum as contributory. This order was sent to the District Judge of Agra for execution, when another person put in an objection to the effect that he was the sole proprietor of the firm. The District Judge declined to consider this objection.

Held, that no appeal lay from the Judge's order, inasmuch as it was under order XXI, rule 36, the objection being under order XXI, rule 58.

* First Appeal No. 38 of 1916, from an order of D. R. Lyle, District Judge of Agra, dated the 8th of January, 1916.